



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/161482

PRELIMINARY RECITALS

Pursuant to a petition filed October 27, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on December 09, 2014, at Oshkosh, Wisconsin.

The issue for determination is whether the agency correctly calculated Petitioner's FS benefits for September 16, 2014 through December 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Leslie Vosters

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Corinne Balter

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County. Petitioner's household size is one. Although Petitioner lives with her boyfriend, Petitioner testified that they make and prepare meals separately. The agency does not dispute this.

2. Petitioner monthly gross income is \$936.11 from her employment with [REDACTED]. Petitioner's monthly rent is \$40. Petitioner is responsible for her utilities including heating, electric, water, and sewer.
3. Petitioner did not receive FS benefits at the time she joined the [REDACTED] program. Petitioner joined the program, and then applied for monthly FS benefits.
4. On October 27, 2014 the Division of Hearings and Appeals received Petitioner's request for fair hearing.

DISCUSSION

In calculating the petitioner's FS allotment, the agency must follow a procedure prescribed by the federal FS regulations, and echoed in the Department's *FS Wisconsin Handbook*. The federal rule requires that the county start with gross income, deducting a limited number of identified deductions from that income to calculate the adjusted income. *FSWH*, 1.1.4. The regulations direct that a Standard Deduction be subtracted from income in all FS cases. 7 C.F.R. §273.9(d)(1). The Standard Deduction for a household size of 1 is \$155, per *FS Wisconsin Handbook*, 8.1.3. There are additional deductions including earned income deduction, excess medical and dependent care. 7 C.F.R. §273.9(d)(3). An Excess Shelter Deduction can be subtracted from the income after deductions if allowable shelter expenses exceed half of the adjusted income. 7 C.F.R. §273.9(d)(6)(ii).

The starting point is gross income. In this case the agency determined that Petitioner's monthly gross income for September, October, November, and December 2014 was \$936.11 from her work with [REDACTED]. Petitioner did not dispute this amount. The agency correctly counted the income Petitioner received from [REDACTED] in her monthly gross income. *FS Wisconsin Handbook* 4.3.2.2. [REDACTED] is included in the Title 1 Domestic Volunteers Services Act. *Id.* The federal regulations specifically state that "payment under Title I (VISTA, University Year of Action, etc.) of the Domestic Volunteer Service Act of 1973 [] shall be construed as earned income." 7 C.F.R. §273.9(b)(1)(iv). The agency is only to disregard that income when the volunteer received FS at the time the person joined the program. *FS Wisconsin Handbook* 4.3.2.2. In this case it is undisputed that Petitioner joined [REDACTED], and then applied for FS benefits, thus the agency correctly included Petitioner's pay from [REDACTED] in her monthly gross income.

Petitioner testified that [REDACTED] contributed \$100 per month to Petitioner's rent. This \$100 per month was not included in Petitioner's gross income. Petitioner testified that her rent is \$140 per month, however, because [REDACTED] pays \$100 for her rent, her monthly rent payment is actually \$40 per month. The agency did not object to handling the calculations in this manner. For that reason, I find that Petitioner's monthly rent expense is \$40.

The last issue is Petitioner's utility obligations. If a person is responsible for their heating and electric, then the person is eligible for the standard heating cost of \$450 prior to October 2014, and \$446 after October 2014. *FS Wisconsin Handbook* 4.6.7.3. In this case Petitioner has been responsible for all of her utility obligations including heating, electric, water, sewer, and a phone since she applied for FS benefits on September 16, 2014. Initially the utility bills were in her boyfriend's name, but she then had the utility bills switched over to her name. I do not believe that it matters whether the bills are in Petitioner's name or her boyfriend's name. Petitioner provided a print out from WPS showing that utility payments were coming out of a checking account for her address. She also provided a City of Oshkosh utility bill for the sewer and gas at her address. This corroborates Petitioner's testimony, which I find to be credible with respect to the utility payments.

It appears that the agency has calculated different monthly FS benefits for each month from September through December 2014. Petitioner's income and expenses have been consistent during that time. The

agency should re-calculate Petitioner's monthly FS benefits from her application date of September 16, 2014 using \$936.11 as her monthly gross income, \$40 as her monthly rent, the heating standard of \$450 for September and \$446 for October, November and December. The other deductions and expenses are correct. Based upon my calculations, Petitioner's monthly FS benefits are approximately \$70. Petitioner was overpaid benefits some of the months, but underpaid the benefits for other months. The agency should recalculate Petitioner's FS benefits for this entire time period consistent with my decision. The agency should then add the total amount of FS benefits paid to Petitioner during this time period. Next the agency should subtract the amount paid from the total amount that should have been issued, and issue Petitioner any remaining FS benefits that she did not receive. These calculations should remain consistent going forward assuming nothing changes.

I note that at the hearing, Petitioner testified that she felt that as an [REDACTED] volunteer she should be getting the full monthly FS benefits of \$194. She testified that others are getting that amount. It is wonderful that Petitioner has chosen to serve her community. That is commendable. It is entirely possible that other volunteers are getting the full amount. Other volunteers may have been FS recipients before entering the [REDACTED] program. In that case the [REDACTED] income is disregarded. Other volunteers may also have higher shelter costs, which would increase their monthly FS benefits. At issue for this appeal is only whether the agency correctly calculated Petitioner's monthly FS benefits for September, October, November, and December 2014. I have addressed those issues.

CONCLUSIONS OF LAW

The agency incorrectly calculated Petitioner's monthly FS benefits from September 16, 2014 through December 31, 2014. The agency may have correctly calculated Petitioner's monthly FS benefits for November 2014, but that amount is inconsistent with the other months.

THEREFORE, it is

ORDERED

The agency should re-calculate Petitioner's monthly FS benefits from her application date of September 16, 2014 using \$936.11 as her monthly gross income, \$40 as her monthly rent, the heating standard of \$450 for September and \$446 for October, November and December. The other deductions and expenses are correct. The agency should add up the total amount for this time period. The agency should then add the total amount of FS benefits paid to Petitioner during this time period. Next the agency should subtract the amount paid from the total amount that should have been issued, and issue Petitioner any remaining FS benefits that she did not receive. These calculations should remain consistent going forward assuming nothing changes. The agency has 10 days to comply with this order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of December, 2014

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on December 23, 2014.

Winnebago County Department of Human Services
Division of Health Care Access and Accountability